

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)	
Reinstatement of Revoked)	
Certificate of:)	
)	
Touraj Kormi)	Case No. 27-2009-202113
)	
Physician's and Surgeon's)	OAH No. 2010070135
Certificate No. A-48807)	
)	
Respondent)	
_____)	

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 21, 2011.

IT IS SO ORDERED December 22, 2010.

MEDICAL BOARD OF CALIFORNIA

By: Shelton Duruisseau
Shelton Duruisseau, Ph.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of Revoked Certificate of:

TOURAJ KORMI, M.D.

Physician's and Surgeon's Certificate
No. A48807

Respondent.

Case No. 27 2009 202113

OAH No. 2010070135

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on September 13, 2010, at Oakland, California.

Albert J. Garcia, Attorney at Law, represented Respondent Touraj Kormi, M.D., who was present.

Kerry Weisel, Deputy Attorney General, represented the Office of the Attorney General, Department of Justice.

The parties agreed to submit simultaneous written briefs as closing argument. Complainant's Closing Argument was marked Exhibit 8 for identification. Respondent's Summation was marked Exhibit H for identification.

The record closed September 29, 2010.

FACTUAL FINDINGS

1. On October 22, 1990, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate number A48807 to Touraj Kormi, M.D., (Respondent). It is currently in revoked status.

2. Effective October 29, 2001, the Board adopted a Stipulated Settlement and Decision concerning Respondent's certificate. The Order provided, among other things, that

Respondent's certificate be placed on probation for five years pursuant to numerous terms and conditions.

3. On January 26, 2004, a Petition to Revoke Probation was signed that alleged violations of the probation order. Effective August 19, 2004, the Board issued a Stipulated Surrender of License and Order. Among other things, the Order states that Respondent may petition for reinstatement in two years.

4. On approximately July 29, 2009, Respondent filed with the Board a Petition for Penalty Relief/Reinstatement of Revoked Certificate. This hearing followed.

Background

5. The events underlying Respondent's disciplinary history with the Board began in approximately August 1997, when a hospital committee confronted Respondent, a plastic surgeon, about his use of narcotics. According to the Accusation that led to the 2001 Order, Respondent admitted diverting Demerol for self-use and agreed to enter treatment for chemical dependency. He also voluntarily entered the Board's diversion program. Positive tests for cocaine in May and for benzodiazepines in September of 1998 were followed by other incidents, which led to his termination from the diversion program April 7, 2000.

6. Pursuant to the 2001 Order, and based upon a psychiatrist's recommendation that he could safely practice medicine under a structured probation scheme, Respondent began a term of probation. In 2002, he resumed practice and obtained privileges at two hospitals, subject to monitoring agreements. But Respondent submitted several urine samples that tested positive for alcohol or Demerol. This led to the petition to revoke and eventually, the surrender of his certificate.

Criminal conviction

7. On June 26, 2008, Respondent was arrested by the California Highway Patrol on suspicion of driving under the influence of alcohol. In his report, the arresting officer wrote that he had received a "be on the lookout" radio call regarding a vehicle that was seen weaving across two lanes and the shoulder of southbound Interstate 5 for approximately 25 miles. The officer spotted Respondent's vehicle, and watched as he began to make a right turn onto a surface street, then immediately made an illegal u-turn, ending up again on Interstate 5. After the stop, the officer observed an odor of alcohol in the vehicle and saw a bottle of vodka, two-thirds full, on the front passenger seat. He then noticed that Respondent smelled of alcohol, and asked him how much he had been drinking. Respondent said that he "drank one or two shots of vodka and that he had taken two pills of Hydrocodone earlier that morning." Respondent also told the officer that he was the chief surgeon of reconstructive surgery at Millad Hospital and not a criminal. The officer administered field sobriety tests to Respondent, and he "displayed impaired balance, coordination and divided attention skills." A breath test later revealed scores of 0.07 percent and 0.06 percent blood alcohol.

8. On August 19, 2008, in the Fresno County Superior Court, Respondent was charged with driving under the influence of alcohol. On September 2, 2008, a bench warrant was issued because he failed to appear for a court date.

9. On June 8, 2009, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Vehicle Code section 23103.5 (a driving under the influence of alcohol offense known as a "wet reckless"). Imposition of sentence was suspended for three years, and he was placed on probation for three years. The terms included the payment of fines and fees, and completion of the Wet Reckless Program. On the plea form that Respondent signed, it is written "The facts on which I base my plea are: I was driving while under the influence of prescription medication and alcohol."

10. On September 7, 2010, Respondent's motion for modification of probation was granted and criminal probation was terminated.

Respondent's petition and supporting documents

11. In his petition, dated June 15, 2009, Respondent wrote that he was voluntarily "teaching courses in plastic and reconstructive surgery, hand surgery, breast reconstruction and burn management in Tehran University in Iran [and] burn and trauma reconstruction at Millad Hospital (social security hospital) in Tehran, Iran." Answering a series of questions about events since surrendering his certificate, he admitted conviction of a criminal offense, describing it as a "traffic violation for reckless driving"; however, he stated that he had not been placed on criminal probation.

12. In the written narrative statement that accompanies his petition, Respondent's comments include the following:

I have a long history of poly substance abuse documented in medical board of California reports. My inability to stay clean and sober while enrolled in [the] medical board diversion program resulted in my medical license to be placed on probation in October of 2001. I had a relapse in July of 2003 and surrendered my license in August of 2004 so that I could fully concentrate on building a solid spiritual foundation to base a life long lasting recovery. I had multiple tragic losses in my family in Iran. I lost both parents and two brothers within eight years while I was attending medical school and post-graduate training. It was brought to my attention by my psychiatrist that I have never had an opportunity to do grief processing for my losses since I resided in the United States. Lack of adequate grief processing was undermining the foundation of my spiritual recovery.

In August of 2003, I moved back to Iran and committed myself to the spiritual recovery center in Tehran. I spent many days at the cemetery in southern Tehran engaging in grief processing with guidance of a spiritual counselor. I also got involved in daily activities of the recovery center in cleaning, cooking and feeding the homeless. I am still working closely with this center and it has done wonders for my overall physical and emotional well being. I have been able to stay clean and sober and have not had any desire for using any substances.

Respondent concludes:

I feel very strong and confident in my new approach to recovery based on a solid spiritual foundation. I believe I can practice medicine safely and be a positive and productive member of my community.

Findings of the Board's investigator

13. Respondent's petition was assigned to Investigator Noel Holloway, who conducted a thorough investigation and testified at hearing. Respondent submitted two letters from physicians in support of his petition. Each was interviewed by Holloway.

14. Shahin Javaheri, M.D., practices in Greenbrae and San Francisco. In a letter dated April 4, 2007, Dr. Javaheri wrote that he has known Respondent "for several years and I am well familiar with the drug dependency issue. I have maintained contact with [Respondent] on several occasions since his move to Iran. He has notified me that he sought counseling in Iran for his dependency . . . [and] has kept me informed about working as a plastic surgeon in Iran at a teaching hospital. To the best of my knowledge I do not get a sense that [Respondent] has engaged in drug seeking behavior It is my intention to recommend [Respondent] for resumption of his license."

On December 14, 2009, Holloway interviewed Dr. Javaheri and informed him of Respondent's criminal matter. Dr. Javaheri then stated that he could not endorse Respondent's reinstatement absent negative drug tests over a course of years, followed by random testing.

15. Ronald M. Sato, M.D.'s letterhead states that he is a "Medical Director, Burn/Out patient wound clinic" at an address in San Pablo. On April 7, 2007, Dr. Sato wrote that he worked with Respondent "nearly 10 years as a plastic surgeon caring for burn patients and those with severe wounds and infection." He is aware of Respondent's drug abuse problems and therapy and notes that Respondent was at that time practicing in Iran. But he also wrote that he has seen Respondent "several times a year when he returns home to visit his family and on all occasions he appears to be drug and alcohol free and not under the

influence of any substance. I look forward to the time when [Respondent] may be able to return and continue the professional association that he and I once had here at this hospital.”

On December 30, 2009, Holloway met with Dr. Sato, who told her that he had last seen Respondent two or three weeks prior. Respondent told Dr. Sato that he had recovered from bladder cancer and was teaching at UCSF. After he looked at the various documents concerning Respondent that Holloway showed him, Dr. Sato opined that Respondent should have known better than to drive while taking alcohol or pain medications. If he were to hire Respondent, he would be on probation for six months, have each case reviewed, his operating room skills monitored, have a paid outside monitor and undergo random toxicology testing. In addition, Respondent should be evaluated for medical competency before resuming practice.

16. Holloway interviewed or spoke with Respondent three times and drug tested Respondent twice. The results were negative for drugs and alcohol. Noteworthy in the interviews is Respondent’s description of his criminal case. Respondent at first stated it was a driving incident and that he was charged with reckless driving. He said that he was pulled over for driving erratically and showed the officers his prescription for Percocet. After the officers verified this medication, he was booked and released, did not undergo any drug test, pled no contest, and was fined \$642. Respondent told Holloway that he no longer drinks alcohol and has not had any for at least three to four years. Subsequently, he told Holloway that it was just a citation for reckless driving and he only had to pay a fine. At the second interview, Respondent told Holloway that he had been given a breathalyzer test but did not know the result; did not remember the number of Percocet he had taken; and believed that he drank a couple of ounces of vodka. On his way to Arizona he had “bladder spasms which resulted in jerky movements of the steering wheel.” He had to pay a fine and take a defensive driving course.

17. During Holloway’s first interview with Respondent, he told her that he was involved in a drug rehabilitation treatment group led by group facilitator James O’Donnell. Respondent had been in a group led by O’Donnell as early as 1997. The current group meets twice a week, and beginning in September 2009, Respondent underwent random urine toxicology testing.

Holloway contacted O’Donnell on February 3, 2010, and he confirmed that Respondent attended his diversion program groups from approximately 1997 to 2003. Respondent abused opiates and alcohol and had multiple relapses before being terminated from the diversion program. He resumed attending groups from September 11 to December 16, 2009, and underwent eight random urine tests that were all negative. He then returned to Iran. O’Donnell opined at that time that Respondent was ready to have his license back, but that it should be placed on probation and that he should be “watched like a hawk.” He further opined that driving with opiates in his system showed an error in judgment.

18. On April 22, 2010, Holloway telephoned UCSF Medical School concerning Respondent’s representation that he was teaching there. She was told that Kimberly Top was

the program director and would be the person to speak with. Top called Holloway on April 23, 2010, and confirmed that Respondent had worked in the anatomy lab as a volunteer. During the second interview on April 28, 2010, Respondent told Holloway that he had been back from Iran for two and one-half weeks and was working in a volunteer capacity as an Associate Professor in the Department of Anatomy at the UCSF Medical School. On April 29 or 30, 2010, Holloway received an email from Top. She confirmed that they had agreed to accept Respondent as volunteer instructor in their gross anatomy laboratory for first year medical students, but also stated that they do not "provide titles for those who assist in the laboratory."

Respondent presented a CV to UCSF that identified him as an "MD." UCSF does not check the credentials of volunteers nor require a medical degree. Respondent described himself as a surgeon and was addressed as "Dr. Kormi" while working there.

Respondent's hearing evidence

19. James O'Donnell worked for the Board's diversion program for 24 years until it was dissolved in 2008. O'Donnell is now the Director of the Contra Costa County Employee Assistance Program and presently has about eight clients through Maximus, a treatment program. He described his current position as part of a monitoring package for impaired health professionals. The meetings are about 90 minutes long and have an average of 10 participants. Most of the time is spent giving each person a chance to talk about his or her problems and issues. It is not a 12-step program; it is a monitoring program. Attendance starts at twice weekly, and can be reduced to once weekly. In addition to the group meetings, attendance at four to five AA meetings a week is required. There is also random urine testing. The participants must call a number every morning and be tested in an observed environment, if told to do so.

20. O'Donnell stated that Respondent's performance in the diversion program was unsuccessful. He had not accepted that he was an addict or taken steps to remain sober. His attitude was angry and resentful, and he thought he was special. Respondent was not willing to do everything that was necessary to remain sober. When Respondent requested to return, O'Donnell was initially unwilling to accept him back. But after listening carefully to what Respondent had been doing for the past six years, he changed his mind. O'Donnell believes he has seen a major transformation; it is as if Respondent were two different individuals. Respondent was humble for the first time. He had come around to a spirituality that allowed him to accept himself as he was and had new ways of dealing with stress. At the meetings, Respondent is an outstanding participant. He knows the field of chemical dependency and helps others.

21. There was a conflict in the evidence as to when Respondent began re-attending the O'Donnell program meetings. O'Donnell reported it as August and Respondent as September 2009, and the evidence concerning continuity of attendance between then and now was somewhat confusing. But it appears that Respondent attended O'Donnell's group until the end of January 2010, was gone for 80 days, then resumed in April. In May, June

and July he attended twice weekly, then was reduced to once weekly, which is his present attendance. The evidence concerning drug testing was somewhat unclear; the total number is approximately 11, however, all of the tests have been negative.

22. After Respondent was arrested, he told O'Donnell that he was written up for a DUI and settled it for a reckless driving. He told O'Donnell that he had been using an opiate post-op from cancer surgery, but not that he had been drinking. O'Donnell was surprised at hearing to hear that alcohol was involved.

23. Respondent described the height of his substance abuse as occurring in 1996 and 1997, when he was addicted to opiates. Demerol was his drug of choice. He moved to Iran to build a foundation for recovery from substance abuse because he was unable to stop relapsing. He lived at the Spiritual Recovery Center in Tehran for about one and one-half years. It is run by leaders who practice Sufism, which promotes a non-materialistic approach to life. The tradition teaches that there is a higher power who oversees our existence, but that we are in control of many aspects of our lives. Residents pay to live at the Center and help by cooking, cleaning and participating in programs such as feeding the homeless. There are groups that gather together recovering individuals, but most of the treatment is one-on-one. Respondent had a spiritual guidance counselor. He also took many trips to the cemetery and did a lot of grief processing. He believes that he had not previously grieved the loss of his parents and two brothers, who passed away when he was abroad attending medical school.

After living at the Center, Respondent moved in with a brother. He worked as a reconstructive surgeon at Tehran's Millad Hospital, and was paid for some of his work. Respondent also volunteered at an Iranian university, teaching breast reconstruction for post-cancer patients, treatment of bed sore wounds, and hand surgery. He continued to be active at the Center, going sometimes daily to participate in activities, help newcomers, and learn about this new approach to life.

Respondent has no documentation that describes the Center or confirms the time he spent there. He contends that it is run by volunteers and special spiritual people and that there is no administration, office, or place to have any records.

24. After returning to the United States, Respondent wanted to get connected with others in recovery and to get tested so that he could document his sobriety. This is why he approached O'Donnell and joined his group. Respondent feels he is now a different person. Previously, he had a lot of issues with feeling special, anger at authority figures and resentment. He was not able to hear or apply the advice he was given. Today, Respondent has been able to build on the solid spiritual foundation he has found and lead a "clean, sober, and happy life." Despite adversities that have come his way, Respondent describes himself as a happy person who does not need drugs or alcohol.

25. Respondent describes his arrest and conviction as the result of unfortunate circumstances. He was diagnosed with bladder cancer in June 2008 and underwent surgery in Phoenix, Arizona. A stent was placed and it had started to erode, resulting in pain and

spasms. His doctor said he needed to go to Arizona and have the stent removed by a colleague there, because he did not have health insurance. On the way, he took pain medications in the morning, which he testified was the result of very poor judgment. Respondent stopped to buy vodka when he still could not handle the pain, and represents that this is the only time he drank alcohol in the past seven to eight years.

As to his report to O'Donnell about the arrest, Respondent claims surprise that O'Donnell did not know that alcohol was involved.

Respondent did not report that he had been on criminal probation on his petition because he did not know that he had been. He did have a lawyer, who said the best thing to do would be to plead no content and that is what he did. He knew he would have to pay a fine and take a course. Further, Respondent continues to maintain that the police report is inaccurate and that he was already stopped when the officer arrived, claiming that "I stopped myself" because of bladder pain.

26. In addition to attending O'Donnell's group, Respondent asserts that he attends a minimum of four and sometimes six or seven NA or AA meetings each week. He has no documentation of this attendance. Respondent also meditates and prays daily, and completes an inventory of his actions every evening before going to bed.

27. Respondent volunteered at UCSF in order to try to stay connected to the medical field. He has always been a teacher, so he felt that teaching was the best thing to do. After having been introduced to the program by a colleague, he dropped off a resume. Because of his training as a surgeon he has a good knowledge of anatomy. Respondent did not tell the staff at UCSF that he was licensed to practice medicine. He used the designation "M.D." because he earned it at medical school and it is relevant to demonstrate his education.

28. Regarding his current family life, Respondent stated that his wife filed for divorce in 2006. He is close to his 10-year-old son who lives in El Sobrante, and sees him almost daily. If reinstated, he would like to practice at a county hospital and would abide by any conditions or restrictions on his license.

29. John McGraw, M.D., is a psychiatrist who treated Respondent from 2000 to 2004 for addiction and depression. It was his professional opinion at that time that Respondent's failure to work through the past loss of family members was causing him to use substances to deal with the pain. Dr. McGraw saw Respondent for a treatment session a few weeks before the hearing, and Respondent told him that a spiritual awakening he experienced while in Iran made him a changed man.

30. Clifford Wong, a retired podiatrist, testified on Respondent's behalf. He has known Respondent for about 14 years. Respondent told Wong about his substance abuse problems and his conviction. Wong believes that Respondent is a very sincere and honest person. He opined that if Respondent returns to practice medicine and is using pain medications, that he should be proctored.

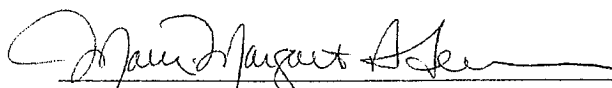
LEGAL CONCLUSION

Respondent has not proven that he is now safe to practice medicine, even on a probationary basis. As he acknowledges, he has struggled with substance abuse for many years. The fact that this struggle is ongoing is reflected in his use of medications and alcohol prior to and while driving a vehicle on an interstate highway. For a person with Respondent's education and background, this was an extraordinary act that demonstrated a profound lack of good judgment. In addition, serious concerns exist concerning Respondent's self-awareness, and even, to some degree, his honesty. These concerns are grounded in his sporadic failure to acknowledge that the substances he has abused include alcohol, his varying stories concerning his arrest and conviction, and even the inflation of his position at UCSF. Further, Respondent failed to present corroborating evidence of his testimony concerning his experiences in Iran. The evidence of current attendance and participation at a recovery group was carefully considered. James O'Donnell brings a wealth of experience to the table and his opinion is of great value. And yet, O'Donnell's opinion is only as valid as the facts that underlie it. He was surprised when told that Respondent's conviction concerned not only medication, but also alcohol. Further, O'Donnell represented that all of his attendees must also show proof of attendance at AA or NA, but he did not have proof of same for Respondent's attendance (and neither could Respondent prove he attends these meetings.) All things considered, it is concluded that to find Respondent a good candidate for probation would involve reliance on his unsupported testimony to an unacceptable degree. A long period of abstinence demonstrated by solid evidence is needed in these circumstances. Accordingly, public safety concerns require that Respondent's petition be denied.

ORDER

The petition of Respondent Touraj Kormi, M.D., for reinstatement of Physician's and Surgeon's Certificate number A48807 is denied.

DATED: November 22, 2010


MARY-MARGARET ANDERSON
Administrative Law Judge